DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

KEYS PLANING MILL CO. *v.* KIRKBRIDE.

Sept. 9, 1912.

[75 S. E. 778.]

1. Equity (§ 392*)—Process (§ 4*)—Cross-Action—Enforcement of Lien.—A general contractor, made a party to a suit by a subcontractor to enforce a lien, and duly served with summons, is bound by a decree against him; but where he was not served with summons to answer a petition filed by another subcontractor to enforce his lien on the balance due from the owner, he is not bound by the decree against him, and is entitled to file a petition for rehearing, as authorized by Code 1904, § 3233.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 834-851; Dec. Dig. § 392;* Process, Cent. Dig. §§ 4, 6, 55; Dec. Dig. § 4.*]

2. Appeal and Error (§ 222*)—Questions Reviewable—Jurisdiction of Trial Court.—Where a subcontractor filing a petition in a suit by another subcontractor to enforce a lien, and obtaining a decree without service of summons on the general contractor to answer, did not raise any question in the trial court as to the jurisdiction of the court to permit the general contractor to file a petition for rehearing under Code 1904, § 3233, but sought to set up facts by answer which would avoid the claim relied on by the general contractor in his petition for a rehearing, and all the defenses that the subcontractor professed he could make were made, and nothing remained to be done except to enter a decree, the subcontractor could not raise, on appeal, any question as to the jurisdiction of the trial court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1156, 1333-1336; Dec. Dig. § 222.*]

3. Equity (§ 249*)—Pleading—Exceptions—Effect.—An exception to the sufficiency of an answer in a suit in equity is equivalent to an averment that the answer, if true, constitutes no defense.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 521; Dec. Dig. § 249.*]

4. Equity (§ 392*)—Election of Remedies (§ 6*)—Enforcement—Right of General Contractor to Rehearing.—A general contractor made a party to a suit by a subcontractor to enforce a lien, was no served with summons to answer a third person's petition in the sui

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*For other cases see same topic and section NUMBER in Dec Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

to enforce his lien. The court entered a decree enforcing the liens. The general contractor conveyed real estate to the third person; but the deed did not set out the real consideration therefor. The third person, through his manager, executed, pursuant to a settlement, a release of an indebtedness specified due from the general contractor. The manager had no personal knowledge of the terms of the settlement. Held, that the release did not, as a matter of law, constitute a release of the decree obtained by the third person; and the court must require the contractor to elect whether he would prosecute his action at law against the third person for the recovery of money paid pursuant to the decree, or prosecute his right to the money in a proceeding for a rehearing of the cause, as authorized by Code 1904, § 3233; and, where the general contractor elected to prosecute by petition for rehearing, the court must determine the issues on the pleadings and proof.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 834-851; Dec. Dig. § 392;* Election of Remedies, Cent Dig. §§ 7-11; Dec. Dig. § 6.*]

Appeal from Circuit Court, Tazewell County.

Petition by T. W. Kirkbride for a rehearing of the cause of action of the Keys Planing Mill Company against him and for the recovery from the company of a sum paid by a receiver pursuant to the decree. From a decree granting the relief prayed for, the Keys Planing Mill Company appeals. Reversed and remanded.

Henry & Graham, for appellant.
Henson & Bowen, for appellee.

NEWBERRY et al. *v.* DUTTON.

Sept. 9, 1912.

[75 S. E. 785.]

1. **Judgments (§ 217*)—Final Judgment— Sufficiency.**—Entry by the court, in its regular order book, under the style of the suit in ejectment, of the fact of the jury returning a verdict for defendants, followed by the words, "It is therefore considered by the court that the defendants recover of plaintiff their costs in this behalf," is a sufficient final judgment for defendants as to the lands described and involved in the case, to be determined by consultation of the pleadings.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 394; Dec. Dig. § 217.*]

2. **Judgment (§ 461*)—Suit for Correction—Contradicting Record.**—Aside from the question of one having negligently failed to avail himself of his remedy in the action in which the judgment was ren-

*For other cases see same tonic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.